EDGAR SEBASTIAN ROBERTS

IBLA 90-436 Decided September 21, 1993

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. NMC 568083-NMC 568089.

Affirmed.

1. Mining Claims: Location--Mining Claims: Withdrawn Land--Segregation

   Mining claims located on land segregated from appropriation under the mining law by a proposed classification decision made pursuant to 43 CFR 2741.4(h) (1985) are null and void ab initio.

2. Administrative Authority: Estoppel--Estoppel

   Circumstances may exist where the Government can be estopped because a private party, acting in reliance upon Governmental conduct, was prevented from obtaining a right which might have been otherwise obtained. However, the Government can never be estopped if the effect of invoking estoppel would grant a right which was not available in the first instance.

APPEARANCES: Edgar Sebastian Roberts, Carson City, Nevada, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Edgar Sebastian Roberts has appealed a decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 4, 1990, declaring the Silverado Nos. 1 through 7 mining claims (NMC 568083-NMC 568089) null and void ab initio because they were located on land "segregated against mineral location and entry on February 7, 1985, by Recreation and Public Purposes (R&PP) Classification N-7325." 1/

1/ The location notice for the Silverado No. 1 identifies Edgar Julio Roberts as the sole locator. Edgar Julio Roberts, and Edgar Sebastian Roberts, the appellant herein, have the same home address and were both named in the BLM decision appealed. While there is no indication in the record that Edgar Sebastian Roberts is qualified to appear on behalf of Edgar Julio Roberts, the regulations governing practice before the Board of

On July 3 and 4, 1989, the Silverado Nos. 1 through 25 mining claims (NMC 568083-NMC 568107) were located in secs. 33 and 34, T. 16 N., R. 20 E., Mount Diablo Meridian, Nevada. The location certificates and a map were filed with BLM on September 1, 1989, for recordation pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1988). The case file includes a copy of a letter dated February 7, 1985, addressed to the Board of Carson City Supervisors. It states in part: "Enclosed is a copy of a proposed decision that has been prepared pursuant to the regulations in 43 CFR 2450.3(a). This proposed decision is designated as Attachment 'A'." The document which is attached is titled "Classification Decision," describes the affected land as the SE¼, E½ SW¼, sec. 34, T. 16 N., R. 20 E., Mount Diablo Meridian, Nevada, and indicates that it "would be used as an expansion to the existing Carson City golf course." The attachment also states: "Pursuant to 43 CFR 2741.4(h) [1984], the subject land will be segregated from all other appropriations, including location under the mining laws, upon issuance of this classification decision." It is signed and dated February 7, 1985, by rubber stamp.

The entry on the Master Title Plat for the land described in the proposed classification decision is "N7325 R&PPLse, N7325 R&PPCl." The Historical Index (HI) similarly shows: "R&PPCl, N7325, 2/7/85." The HI also contains an entry "Ren 4/23/90."

At the request of the Board, BLM forwarded the case file for R&PP lease No. N-7325 for review in connection with this appeal. An examination of that file shows that on August 24, 1982, the Public Works Director, Carson City, Nevada, filed a request with BLM to amend R&PP lease No. N-7325 to include "SE1/4 and the E1/2 SW1/4 of Section 34, T. 16 N., R. 20 E., M.D.B.&M." No adverse comments were received to the February 7, 1985, proposed classification decision within the time allowed, and on August 14, 1985, BLM notified Carson City, Nevada, of its decision to amend R&PP lease No. N-7325 to include the lands on which the mining claims were located. The R&PP lease was renewed on April 7, 1990.

In his statement of reasons, appellant essentially raises an estoppel argument to challenge the BLM decision. He states that after checking with the offices of the recorder and the tax collector, he went to the BLM office in Carson City, Nevada, to see if the land was open for mining claim location. He states that

> [t]he person in charge of this department gave me a map and informed me that the area in question was open for mining claims. I then went to the expense of surveying, staking, maping [sic] and filing the Silverado Group of mining claims. In addition,

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fn. 1 (continued)
Land Appeals permit an individual to appear on behalf of himself, a member of his family, a partnership, and in other circumstances which do not appear to be applicable in this case. 43 CFR 1.3. To the extent that Edgar Sebastian Roberts is not authorized to represent the interest of Edgar Julio Roberts, this decision does not consider the BLM decision as it relates to the Silverado No. 1.

> I did work on these claims with equipment. Had the Carson City, Nevada[,] BLM office informed me otherwise, I would have stopped and saved my self time and expenses.

[1] 43 CFR 2741.4(h) (1985) provides that "issuance of a notice that public lands are suitable for sale or lease under the act and are classified as such shall segregate such public lands from all other appropriations, including locations under the mining laws." Thus the land was segregated from mineral location by the proposed classification decision, issued February 7, 1985, and has remained closed since that date. It is well established that mining claims located on Federal land not open to location under the general mining law on the date of location are null and void ab initio. Patsy A. Brings, 119 IBLA 319, 330 (1991).

[2] A mining claimant is responsible for learning the true status of the land on which his mining claims are located, and reliance on a BLM employee for information will not validate mining claims located on lands closed to entry. As we said in Shama Minerals, 119 IBLA 152 (1991), at 156:

> While the courts and the Department have recognized that circumstances may exist where the Government can be estopped because a private party, acting in reliance upon Governmental conduct, was prevented from obtaining a right which might have been obtained, the Government can never be estopped where the effect of the estoppel is to grant someone a right which was not available in the first instance.

See, e.g., Ptarmigan Co., 91 IBLA 113 (1986), aff'd, Bolt v. United States, 994 F.2d 603 (9th Cir. 1991); Edward L. Ellis, 42 IBLA 66 (1979); Juan Munoz, 39 IBLA 72 (1979). Since the invocation of estoppel in this case would result in the grant of a right not authorized by law (the location of mining claims on land not open to mineral entry), it cannot be permitted. See 43 CFR 1810.3.

The land on which the Silverado Nos. 1 through 7 mining claims were located was classified for lease or sale pursuant to the Recreation and Public Purposes Act of 1926. It is proper for BLM to declare lode mining claims null and void ab initio if they are located on land segregated from mineral entry by a valid classification at the time of location. Mike & Sandra Sprunger, 123 IBLA 330, 332 (1992).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge